



**RESPECT FOR THE CORRELATION
BETWEEN MORAL, RELIGIOUS AND
LEGAL VALUES OF THE RULE OF LAW -
MANDATORY CONDITION IN THE
PROCESS OF ADMINISTRATIVE-
DISCIPLINARY LIABILITY OF CUSTOMS
OFFICIALS IN THE REPUBLIC OF
MOLDOVA**

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Abstract:

The administrative-disciplinary liability of customs officials in the Republic of Moldova involves the affectation of a whole set of social values, which are called to ensure order and stability in society but also to ensure a balance between moral, religious as well as legal values, installed in a democratic society. Ensuring such a fair balance is the guarantee of achieving the goals set in the process of creating and stabilizing the rule of law. Research on the correlation of data constitutes the core of the current study.

Keywords: Customs law; customs official; disciplinary responsibility; rule of law

Even though there are common aspects in the forms of legal liability, they cannot be regulated in general because liability is only possible between responsible and free persons. Legal liability is an important element of social responsibility, which is essential for the social coexistence of people.

From a philosophical point of view, responsibility is a consequence of the exercise of freedom, peoples must be responsible for everything they do. This view of responsibility is also in line with the moral and religious precepts according to which every man is responsible for his actions, being subject both to the responsibility regulated by human laws and, above all, to the divine judgment, which is infallible

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and from which he cannot escape. In this sense, theology distinguishes between positive sanction and rewards when the act is in accordance with the moral order. And negative sanction or punishment when the act violates the moral order. Thus, no human deed remains indifferent: if it is good, it is rewarded, if it is bad, it is punished (Safta-Romano, 1997, pp. 167-172).

The customs official is a representative of the state, and the trust of the citizens in the policy of the customs authorities and the state is very important for his conduct. Following ethical principles, the customs authority of the Republic of Moldova and its employees realize their moral responsibility towards the state, society, and citizens as well as the international community. The sources of the ethical principles that should guide the customs authority and their staff, and which will be explored below, are the legislation of the Republic of Moldova, treaties, and international agreements to which it is a party (Bodlev, December 2017, pp. 21-22).

Like any form of legal liability, administrative-disciplinary liability plays a subsidiary role, because the sense of responsibility, as the main characteristic of human dignity and personality, is the most important factor in guaranteeing the rule of law. In the event of misconduct, administrative and disciplinary liability has a triple function: preventive, punitive and educational. The person is subject to a predominantly moral or material punishment, depending on the seriousness of the offence, which is reflected in the conscience and attitude of the punished person in the form of moral coercion or material deprivation to discourage him or her from committing future offences.

The general conditions of administrative liability are largely the same as the conditions of other forms of legal liability: the existence of an injury and a harmful act, linked to the injury by a causal connection, and the characteristics that the injury must have in order to give rise to administrative liability are the same as those that the injury must have in order to give rise to other forms of legal liability. Any form of legal liability (administrative-disciplinary liability, administrative-contractual liability, or administrative-patrimonial liability) is incurred by a person who has the status of a customs official and can arise in this capacity only if such an employee of the administration has culpably breached his or her official duties. Therefore, the law sets out two prerequisites for a certain form of legal liability of a custom official to arise:

- (a) the person in question breaches one or more of his or her official duties;
- (b) he acts culpably, which in both cases excludes any form of strict liability on the part of the public official.

Disciplinary misconduct in the form of a breach of the customs official's duties and of the legal rules of professional and civic conduct is therefore a necessary condition for the customs official to incur disciplinary liability. As can be seen from the text of the law, the legislator has provided that not every breach by a customs official of the duties and professional rules corresponding to his official function constitutes disciplinary misconduct, but only if the breach is intentional or culpable. For a custom official to be liable to an administrative or disciplinary penalty, the disciplinary offence must have been committed in the exercise of his public duties or in connection with the performance of his customs duties.

We are dealing here with a form of subjective liability, based on the idea of fault, on the guilt of a disciplinary offence committed by a custom official, rather than objective liability, in which the official can prove elements which exclude his guilt and is thus absolved of liability.

Thus, disciplinary misconduct in the form of a culpable breach of the duties assigned to a custom official and of the rules of professional and civil conduct laid down by law is a prerequisite for the disciplinary liability of customs officials. It follows from the text of the law that the legislature has provided that not every breach by a customs official of the duties corresponding to his public office and of the rules of professional and civil conduct constitutes disciplinary misconduct, but only if the breach is committed with intent or with guilt. For a custom official to be subject to administrative and disciplinary liability, a disciplinary offence must be committed in the exercise of his official duties or in connection with the exercise of his official duties.

As regards the disciplinary liability of a customs official, it has been held that this is a form of subjective liability, based on the idea of fault, on the guilt of the disciplinary offence committed by the official, and that there can be no question of objective liability, since the official has the possibility of proving elements which exclude his guilt and is exonerated from liability (Vedinaş & Călinoiu, 2007, p. 295).

The administrative-disciplinary liability of customs officials in the Republic of Moldova implies the impairment of a whole set of social values, which are called to ensure order and stability in society but also to ensure a balance between moral, religious, and legal values, installed in a democratic society. Ensuring such a fair balance is the guarantee of achieving the goals set in the process of creating and stabilizing the rule of law.

Unlike the legislation of the Republic of Moldova, Article 86(1) of the Staff Regulations of Officials of the European Communities provides that failure by an official or former official to comply with his obligations under these Staff Regulations, whether intentionally or through negligence on his part, renders him liable to disciplinary action¹.

The penalty imposed on Community officials is therefore not conditional on their leaving the service, but may be imposed after they have left the service for acts committed in the course of or in connection with the performance of their duties².

In terms of the principles applicable to the disciplinary liability of European civil servants, it is worth noting the compulsory procedure of hearing the civil servant with respect for his right of defense, the application of a single disciplinary sanction for a disciplinary offence, in accordance with Article 9 (96) of Annex IX, and the right to appeal against the sanction but also to have it removed (Vedinaş & Călinoiu, 2007, p. 267).

The official, according to Art. 22 para. 1 of the Staff Regulations, may be required to compensate the Communities, in whole or in part, for damage suffered by them because of serious misconduct on his part during or in connection with the performance of his duties³.

Violation of the legislation on service in customs bodies, including failure to comply with the guarantees of legal and social protection of customs officials, entails liability in accordance with the legislation. As mentioned above, disciplinary sanctions are applied to customs officials in the form of: warning; reprimand; severe reprimand; demotion in function by one step for up to 6 months; demotion by a special grade for up to 1 year; suspension of the right to be promoted in function for up to 2 years; suspension of the right to be promoted in salary steps for up to 1 year; dismissal from function.

The link between law and morality is one of the most interesting themes addressed in legal and philosophical doctrine, because law, cleansed of morality, risks becoming immoral, or at least a-moral (Dănişor, 2008, p. 17).

As the main measure of influence for violating the requirements of moral and ethical norms, repeated commission of amoral offences, the disqualification of a public official is seen - deprivation of the right to hold office in public authorities. Less

¹ Staff Regulations of Officials of the European Union, in force since 01.01.2014, p. 6.

² Staff Regulations of Officials of the European Union, in force since 01.01.2014, p. 6.

³ Staff Regulations of Officials of the European Union, in force since 01.01.2014, art. 22.

serious breaches of ethics and morality should entail such a specific consequence as an obstacle to further career growth. At the same time, the principle of inevitability of accountability, applied without regard to position and immunities, should form the basis of the ongoing reform of service in customs bodies. No law, no matter how well designed, will work without a well-established mechanism for its implementation and for enforcing accountability for non-compliance with legal rules. As society has evolved, the importance of a "sense of responsibility" has been realized, so that the authorities themselves have felt responsible for sounding the alarm to alert society to react to external factors disruptive to the proper functioning of justice. The proper administration of justice is no longer just a sovereign attribute of the state, but a fundamental right of citizens, the realization of which is one of the parameters for assessing the democratic nature of society, which is the meaning given by the European Court of Human Rights, through its interpretation of Article 6 of the Convention, in relation to what is known in short as the right to a fair trial. Legal liability is established vis-à-vis the State, the sole holder of the prerogative to restore the violated legal order; in modern society, private liability is inconceivable. Despite some similarities between forms of legal liability, there are certain conditions that are specific to each form, and which are essential for legal liability to exist in general. These conditions include that only responsible and free persons can be subject to legal liability and that legal liability is part of social liability. In essence, the need for people to live together socially is the common factor underlying the foundation of liability and responsibility. Both members of civil society and authorities can be involved in various forms of legal liability in social relations. The current approach to legal liability refers not only to individuals but also to the state, its organs, public officials. The content of moral responsibility is defined as a public condemnation of the person who has committed an amoral act, amoral in the perception of others. However, if an individual's moral views coincide with the prevailing morality in society, actions such as that of a public official who violates the ethical requirements imposed on a certain category of persons would not imply moral responsibility or public condemnation. Only in cases where the subject's behavior deviates from the established ethical and moral standards of society will he or she bear the consequences of moral coercion. This assumption is particularly relevant from the point of view of modern society's attitude towards manifestations of corruption, which have in fact become the norm for most citizens, who, having entered corrupt relationships, do not see it as immoral.

The term "ethos" is of ancient Greek origin, coming from the word "ethos" - a dwelling, a burrow, a nest. Later, this concept takes on a different meaning - the

stable nature of any phenomenon, including character, the inner temperament of man. The terms "ethics", "morals", "morality" in their etymological and historical content are similar, significantly intersecting and, in principle, interchangeable: we say "ethical rules", "moral principles", "moral norms", giving different meanings to the general concept. Administrative liability is, in the simplest definition, that form of liability which arises from the violation of administrative law rules. Most of the time, the liability of public officials towards the public institution is only for the actual damage and not for the benefit not realized, like the material liability in labor law, but with which it is not confused. Two of the forms of liability in administrative law are characterized by a repressive sanction, namely typical administrative liability (properly speaking - administrative-disciplinary) and misdemeanor liability, and the third form of liability called administrative-patrimonial liability, is characterized by a reparatory sanction for damage caused by illegal acts of public administration bodies (Slăniceanu, 1999, p. 395).

Customs officials are liable for admitted illegalities in the process of conducting customs activities. There is no doubt that all existing types of legal liability serve as a means of maintaining discipline and organization within the customs authority. However, considering the issue of legal liability of customs officials, it is impossible to avoid the issue of moral responsibility, which should be placed at the top of the responsibility of any category of employees, because moral principles, morality of each person affects his official misconduct, responsible attitude to the fulfillment of his legal obligations and behavior in their own house. It should be highlighted that legal liability arises when a person's moral responsibility is violated. Without recourse to moral responsibility, the moral motives of public officials cannot be analyzed. The Code of Ethics and Conduct of Customs Officials, approved by Government Decision No. 1161 of 20 October 2016, establishes the principles of ethics and conduct, which should govern the work of the customs authority as well as customs officials with special status within the Customs Service, such as: legality, professionalism, quality of services, integrity, loyalty, confidentiality, independence, impartiality.

In order to maintain and protect the authority of the state and to fulfil their commitments to society, each customs official and other public servants, within the framework of personal responsibility, is obliged to comply with the requirements of the standards of conduct corresponding to their status. Customs officials and other public officials must observe the general principles of conduct that apply to all members of the company. They must perform their duties in accordance with the law, instructions and ethical standards related to their official position. One of the

main duties of a customs official as well as other public officials is the duty to respect moral principles, to be loyal to the State and to put the interests of the State before personal interests, parties, organizations, to be responsible for conscientiously and professionally fulfilling their responsibilities to their Country and fellow citizens. Customs officials and other public servants should not take actions that would be contrary to this obligation.

Administrative reform, which has now become an urgent necessity, must largely focus on the moral side of the civil servant's personality. This is more necessary because in the present conditions "departmental" nihilism is flourishing, fueled by the lack of accountability of civil servants for their misconduct. The situation is further aggravated by the practice of the arbitrary exercise of discretionary power, which practically alienates citizens from power (Costachi & Iacub, 2015, p. 22).

Some researchers rightly argue: the legal consciousness and legal culture of civil servants must reach such levels that law is perceived as one of the most important values, placed on the same level as morality and religion (Akimova, 2013, p. 230).

Therefore, at the basis of the legal culture of the civil servant must be a feeling of deep respect for law. In this regard, specialists state that a high level of legal culture ensures a lawful conduct on the part of the civil servant, the motivation of which is to believe in the fairness of legal norms. From this point of view, legal culture can be seen as a living human phenomenon. It lives only in the legal consciousness and in the legal conduct of all subjects of law (Akimova, 2013, p. 230).

The local author Gh. Costachi, in his monograph "The role of justice in building the rule of law", has made a profound analysis of the problem of the moral imagery of the public servant at the present time, which we univocally support.

Legal culture dictates to each person the principles of correct and legal conduct, and society - the system and legal values, ideals, rules of law, which ensure the unity of legal institutions. It is inconceivable outside of moral coordinates (Costachi & Iacub, 2015, p. 581)

Thus, society places greater moral demands on certain professional activities. These are activities involving important decisions with certain legal and economic consequences (such as the work of judges, customs officials, etc.).

In this context, the author Costachi Gh. believes that it is necessary to specify the principles that are governing the professional conduct of civil servants, which in essence outline the main coordinates of the legal culture required in the sphere of public administration.

- a) Supremacy of the Constitution and the law, which obliges the civil servant to respect the Constitution and the laws of the Country,
- b) the priority of the public interest, which is at the heart of the work of the administration in general, implicitly of its civil servants, hence the duty of civil servants to consider, in the exercise of their public duties, the public interest above personal interest. Herein lies the whole philosophy of the ability of the administration and its officials to cope with the task with which they are entrusted. It is essential to understand that anyone who does not have this aptitude is not suited to public service.
- c) Professionalism, which requires civil servants to carry out their duties responsibly, competently, efficiently, fairly, and conscientiously. Throughout the world, there have been two types of systems for recruiting and, by extension, designing the civil service. The spoils-system, which implies an administration deeply attached to the political class that governs, which means that changing this political class necessarily entails changing the civil service, and the merit-system, which means that, whoever is in charge, the civil service retains the positions it has held, based of competence and professional merit.
- d) Impartiality and independence, principles which oblige civil servants to have an objective attitude, neutral regarding any political, economic, religious or other interest in the exercise of public office.
- e) Moral integrity, which is a principle prohibiting public officials from seeking or accepting, directly or indirectly, for themselves or for others, any advantage or benefit by reason of their public office or from abusing their office in any way. It is important to stress that morality and professionalism are the two pillars on which the public service must be built or, rather, rebuilt in the contemporary period.
- f) Freedom of thought and expression, which means recognizing the right of civil servants to base their opinions on the rule of law and morality. The freedom of civil servants to express their thoughts and opinions is subject to certain limitations, and the doctrine even speaks of obligations of reserve which they must show in exercising this fundamental freedom. For example, civil servants are forbidden to criticize their institutions. Even if there are certain aspects that may displease him. It is his duty to help reduce these negative aspects, which cause an unfavorable perception on his part or on the part of others. The limits he must respect are the rule of law, i.e. the law and good morals; or in other words moral law.

g) Honesty and fairness, which together form a principle which obliges the public servant to act in good faith in the exercise of his duties.

h) Openness and transparency, which imply that the activities carried out by public officials must be public and subject to public scrutiny. Obviously, there is a dimension of the work of public officials that is subject to confidentiality, but beyond these aspects, the public must be able to know and monitor the work of public officials, which requires that it be public.

Respect for all the above principles and high moral standards on the part of civil servants are necessary, especially in situations where discretionary power is exercised, since it is precisely at such times, when civil servants resolve certain questions relating to people's interests and rights on their own, according to their own convictions, that conditions are created for abuse and illegal use of their position (Costachi & Iacub, 2015, pp. 582-586).

The Committee of Ministers of the Council of Europe adopted Recommendation No. R (2000) 10 on codes of conduct for public officials, adopted on 11 May 2000 at its 106th session, in which the main emphasis is on drawing public attention to and promoting ethical values as essential mechanisms for preventing corruption.

The current Code of Ethics and Conduct of the customs official with special status in the Customs Service, approved by the First Decision No. 1161 of 20 October 2016, in addition to the rules of professional conduct, rights and restrictions in the work activity, the gift regime, advantages related to this regime, conflict of interest, confidentiality and use of service information, use of public resources, also establishes the principles governing the conduct of the customs employee. The Code also includes the acceptance and regulations in the field of relations with the public, such as conduct in international relations, collegial conduct, managerial conduct, including the working environment.

The basic conclusion is that the legal basis and the procedure for applying disciplinary liability are governed by private law rules, while the legal basis and the procedure for applying administrative disciplinary liability are governed by public law.

Administrative-disciplinary liability must result from the law or other legal acts, which must also specify the "objective aspects", i.e. the action or inaction and, of course, the circumstances of time and space in which it must take place in order to qualify as disciplinary misconduct.

Administrative-disciplinary liability is a form of state coercion which manifests itself in the employer's reaction to the employee's commission of the offence, i.e. by imposing on the employee the disciplinary sanctions prescribed by law and by applying the sanctions in the manner prescribed by law.

Thus, we can conclude that the obligatory condition in the process of administrative-disciplinary liability of customs officials in the Republic of Moldova is the respect of the correlation between moral, religious and legal values of the rule of law.

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